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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,400	05/19/2004	Timothy Graham Frank	02581-P0556A	6980
24126 7590 01/13/2010 ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619				
EXAMINER				
MENDOZA, MICHAEL G				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
01/13/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/849,400

Applicant(s)

FRANK ET AL.

Examiner

MICHAEL G. MENDOZA

Art Unit

3734

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 and 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 13 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 10/30/09 have been fully considered but they are not persuasive. The applicant argues that Schwarz et al. does not teach a spring fixedly connected to the handgrips of the handle, via at least two stationary bearing points, and wherein the locking of the two jaw member in both end positions is caused by the spring element only. The examiner disagrees. The spring is fixedly connected to the handgrips when the spring is within the bearing point (7) and received within a locking step (11 or 35). Bearing points (7 and 31) do not move. There are no other means for locking the jaws besides the spring, e.g., ratcheting teeth as in the applicant cited art 4192314. Without the spring 6, the device of Schwarz et al. would not lock.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

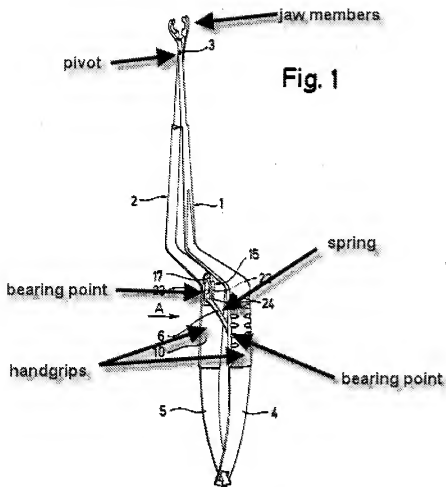
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1-7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwarz et al 4462404.

4. Schwarz et al. teaches a medical grasping and holding instrument with a handle consisting of two handgrips and a holding portion that consists of at least two jaw members, a spring element, an end position that releases the holding portion, an end position that locks the holding portion, wherein the spring element configured as a flat

spring and connecting the two handgrips to one another is mounted between the handgrips of the handle in such a way of a bearing point of a handgrip on the spring element between two end positions that relax the spring element; wherein the spring element is mounted so that is pretensioned between the handgrips; wherein the spring element is stored with one end at a storage point in the area of the proximal end of a handgrip and the other end at a storage point in the center area of the other handgrip; wherein a handgrip of the handle is configured as to rigidly conjoined in one piece with one jaw member of the holding portion, wherein the other handgrip of the handle is pivotally connected with the other jaw member; an extension, on the free end of which extension the spring element is stored; wherein the bearing point where the spring element in a center area of the handgrip is stored, is arranged in an upper end position the released the holding portion, above a line (L1) which connects the pivot point between a rotatable handgrip and a rotatable jaw member with the bearing point of the spring element in the area of a proximal end of the rigid handgrip.



Allowable Subject Matter

5. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is

(571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734